

waiver granted as to Rule 4901:1-5-07(D), O.A.C., shall be extended for one year.

OCC's request for records and reports and inclusion on notices.

- (12) In its application for rehearing, OCC argues that the Commission erred in its interpretation of OCC's statutory jurisdiction and responsibilities and thereby failed to adequately recognize OCC in various customer notices and failed to require that numerous reports and documents be filed with the OCC. More specifically, OCC argues that Rule 4901:1-5-05(E), O.A.C., should have required LECs to provide OCC with copies of their complaint handling procedures⁴; Rule 4901:1-5-07(C), O.A.C., should have required LECs to provide OCC notice of any local business office closings; Rule 4901:1-5-11(B), O.A.C., should have required each LEC and IXC to provide the OCC a copy of its operator practices and procedures; Rule 4901:1-5-14(B), O.A.C., should have required each LEC and IXC to provide OCC a copy of its customer creditworthiness standards; Rule 4901:1-5-21(C), O.A.C., should have required each LEC to provide the OCC information regarding scheduled central office upgrades and plans for NXX changes; and Rule 4901:1-5-22(D), O.A.C., should have required each LEC to provide OCC a copy of its emergency contact report and letter regarding changes to its emergency plan. OCC further posits that the Commission erroneously failed to include a notation of OCC's availability to provide assistance to residential subscribers on a subscriber's periodic bill, as well as on all disconnection notices sent to subscribers by telephone companies. OCC contends that Rule 4901:1-5-16(A)(14), O.A.C., should have required a reference on the bill informing subscribers of OCC's availability to help resolve residential billing disputes and Rule 4901:1-5-19(K)(3)(h), O.A.C., should have required disconnection notices to include a statement as to the availability of OCC to assist residential customers.
- (13) First the Commission notes that it has been the Commission's long-standing practice to notify OCC when a LEC decides to close its local business office. Consistent with past practice the Commission expects to continue to inform OCC once the Commission is notified that a LEC intends to close a business office. Accordingly, the Commission sees no reason for granting rehearing as to this aspect of Rule 4901:1-5-07(C), O.A.C.

⁴ OTIA supports OCC in their arguments as to this rule.

- (14) As to OCC's request for various records, reports and documents, several industry commentators have opposed the request in their respective memoranda contra. Ameritech's memorandum contra implies support for the Commission's decision not to require that records and reports filed with the Commission also be filed with OCC. Ameritech emphasizes that OCC's argument that records and reports be filed on a regular basis with the Commission and with OCC implies that OCC "has the authority to initiate audits for noncompliance with service level requirements...." Ameritech argues that "OCC's desire to expand its regulatory oversight is not consistent with its limited statutory authority" and rehearing of such issues should be denied. Even OTIA, which emphasized that it took no position on the merits of the jurisdictional argument and was not opposed to informing customers about OCC, recognized that the telecommunications industry should be moving towards less regulation rather than more regulation. OTIA contends that, if the alleged OCC jurisdiction requires obligations on the part of LECs, in addition to the obligations owed to the Commission, the result is clearly the "multiplication of regulatory obligations, at a time when those obligations should be diminishing.

Likewise, MCI remarked that while providing copies of reports filed with the Commission and with OCC as well is a requirement that will simply increase the administrative expenses of the carriers, with little customer benefit. Furthermore, MCI argued that because documents docketed with the Commission are readily available to OCC and certain filings are already required to be served upon OCC, it would be more efficient for OCC to request information that it desired from either the Commission or the particular carrier.

AT&T argues that OCC has sufficient access to relevant records and reports to enable OCC to fulfill its statutory duties and opposes OCC's request. Further, AT&T submits that the costs to include the additional language on the monthly bill of every customer is not *de minimus*, as asserted by OCC.

- (15) The Commission believes, as we stated in the finding and Order, that as competition emerges the level of traditional regulatory oversight should be reduced. For this reason, the Commission has eliminated bureaucratic processes and filings previously imposed on the LECs which serve very little if any purpose in protecting the public interest, monitoring the

industry, or assisting the Commission in the performance of its duties. Accordingly, in the newly-adopted MTSS, we have recognized that during the transition from a monopoly to a competitive environment, traditional regulatory oversight should be reduced and specifically concluded that many filings and reports the Commission previously received automatically were not necessary. On that basis, the Commission has endeavored, through the enactment of these standards, to fulfill our duties as a regulator by only requiring the information necessary to fulfill our duties to regulate, supervise and monitor public utilities, which includes among other things, the authority to conduct customer service audits, ensure service quality, and otherwise protect the public interest. If the Commission were to require that all information the Commission needs to fulfill our duties, obligations, and responsibilities were also submitted to the OCC, such directive would clearly result in the duplication of regulatory obligations at a time when such bureaucratic requirements on the LECs should be diminishing.

The Commission recognizes that OCC has every right to obtain the information necessary to carry out its obligations to residential consumers. The Commission further clarifies that we have no intention of limiting OCC's access to public records, pursuant to Section 4911.16, Revised Code. Furthermore, the Commission will maintain the informal and formal lines of communication with OCC which have been enjoyed over the years and intends to provide OCC with information to assist OCC in its mission of representing residential consumers.

- (16) The Commission also believes that OCC's request to be referenced on all customer bills and all disconnection notices is duplicative and unnecessary. OCC's application for rehearing fails to acknowledge that both the synopsis of the customer bill of rights, which is a part of the directory, and the full text of the customer bill of rights, which is to be mailed to each subscriber upon request as well as upon the initiation of new service, includes a reference that OCC is available to handle residential complaints and provides OCC's telephone number, street address and Internet address. In light of the fact that OCC is listed in the white pages telephone directory, likely one of the first sources of information a customer will refer to in the event of a dispute with the LEC or a question about service or service providers, the Commission believes that information concerning the availability of OCC to provide

assistance has been adequately addressed to serve the needs of Ohio residential customers as well as OCC's statutory obligations. We continue to believe that at a time of movement to a more competitive environment, OCC's request will only lead to greater bureaucratic burdens at a time when this Commission has reduced its own filing requirements on the LECs in favor of a more customer-focused, less regulated structure. Therefore, OCC's request for rehearing of the above listed rules is denied.

Carrier Indemnification

- (17) Rule 4901:1-5-01(G), O.A.C., permits a new entrant carrier (NEC) to recover from the underlying local exchange carrier billing adjustments paid to an end-user customer pursuant to Rule 4901:1-5-18, O.A.C. OTIA and Ameritech oppose this provision of the MTSS. Ameritech and OTIA contend that an underlying local exchange carrier should not be required to indemnify a NEC for the NEC's obligation to provide billing adjustments to the NEC's customers. Both argue that indemnity issues should be left to the contractual arrangements between the underlying local exchange carrier and the NEC and should not be addressed in these rules. According to Ameritech, the MTSS are aimed at the relationship between LECs and their respective end-users and, therefore, should not apply to the carrier-to-carrier relationship. OTIA argues that NECs should be responsible to their subscribers and the relationship between the NEC and the incumbent local exchange carrier (ILEC) or underlying carrier established by contract. Ameritech and OTIA request clarification of what constitutes an ILEC's failure to provide "adequate support". In addition, OTIA requests clarification of the type of "recourse" which will be available to the affected NEC. Ameritech specifically proposes that, if the provision is retained, such recourse should be restricted to explicit violations of the MTSS and should be limited to the amount the NEC pays for the service in question, not the rate the serving carrier charges its end users. OTIA believes that Rule 4901:1-5-01(G), O.A.C., provides a whole new set of administrative disputes to be heard in complaint cases and invites NECs to credit customers at the expense of the underlying carriers. OTIA recommends that the Commission leave such indemnity to the parties in the negotiated agreements under which they otherwise operate.
- (18) Ameritech further argues that Rule 4901:1-5-01(G), O.A.C., will (a) place unnecessary record-keeping obligations on the

ILECs; (b) add to the ILEC's cost of doing business, which Ameritech believes should be passed on to the NECs; (c) encourage questionable credit claims; and (d) leave ILECs at the mercy of the NEC. Ameritech submits that the rule should also recognize the right of the underlying carrier to have recourse against the serving carrier (a) whose errors or omissions cause unjustified credits to be paid; (b) whose actions caused the claim for recourse against the underlying carrier; or (c) which uses any scheme or device to collect unjustified recourse claims under this rule.

- (19) On the other hand, MCI objects to Rule 4901:1-5-24(C), O.A.C., as it relates to carrier-to-carrier relationships. MCI suggests that a higher standard applicable to resale performance by underlying carriers should be adopted.
- (20) In developing the adopted provision of the MTSS, the Commission considered the arguments raised by OTIA and Ameritech that the carrier-to-carrier relationship should be governed by contract. As noted in the Finding and Order, facilities-based carriers may have refused to incorporate the then current or subsequently effective MTSS into their interconnection agreements. Therefore, the Commission found it necessary in its order to ensure all end-users a minimum level of adequate service by incorporating the MTSS into all interconnection agreements to the extent that no such standards had been incorporated into an interconnection agreement or to the extent such standards in the interconnection agreement do not meet the level of the MTSS adopted. None of the arguments presented in the applications for rehearing have convinced the Commission that Rule 4901:1-5-01(G), O.A.C., is inappropriate, unnecessary or misguided. We agree, however, that the details of how it will be implemented should be addressed in the carriers' interconnection agreements. To this end, we direct the carriers to submit, for Commission approval, amendments to the interconnection agreements which should address all relevant aspects of the carrier-to-carrier relationship and the applicability of the MTSS rules by October 9, 1997.
- (21) Moreover, the Commission does not believe that MCI's suggestion to include in Rule 4901:1-5-24, O.A.C., a higher standard for underlying LECs, so that resellers can be assured of an opportunity to comply with MTSS, is necessary. MCI has posed this same argument in arbitration proceedings before

the Commission and it was rejected. The Commission believes that the indemnity provision of Rule 4901:1-5-01(G), O.A.C., is sufficient to provide resellers with the ability to comply with MTSS. Accordingly, if the underlying LEC, by providing inadequate support, makes it impossible for the serving LEC to meet the MTSS and, as a result, the serving LEC has to issue billing adjustments pursuant to Rule 4901:1-5-18, O.A.C., then the serving LEC shall have recourse to the underlying LEC for the amount of the required billing adjustment. The Commission believes such recourse will encourage the underlying LEC to support the serving LEC in meeting the Rule 4901:1-5-24, O.A.C., requirements. In doing so, Rule 4901:1-5-01(G), O.A.C., should have the effect of eliciting a higher service level from the underlying LEC than is directly required by Rule 4901:1-5-24, O.A.C.

We clarify that the underlying carrier shall only be required to indemnify the serving carrier under very specific situations wherein the underlying carrier is at fault, that is when Rule 4901:1-5-01(G)(1) and (2), O.A.C., are met. As regards Ameritech's arguments that the rule should recognize that the underlying carrier would have recourse against the serving carrier, the Commission clarifies that, in the event there is a dispute as to whether the underlying carrier is actually liable under our rules, the underlying carrier should raise any relevant defenses in a complaint proceeding before the Commission. We further clarify that "recourse" as used in our rules only means the amount for which the serving carrier was obliged to credit its end user; it does not mean punitive or any other damages. This is not to say that the parties may not agree on different terms in their individual resale agreements. In addition, as to the argument that indemnity should be limited to the amount paid by the serving carrier to the underlying carrier, as opposed to the true credit or waiver owed under Rule 4901:1-5-18, O.A.C., the Commission finds that such a limitation would undermine the intent of the MTSS which is to ensure that all customers are treated on an equal basis and, therefore, we reject the arguments.

- (22) A few of the applications for rehearing note numbering, alphabetical and reference errors. Ashtabula notes that the definition of public interest payphone in Rule 4901:1-5-02(A)(62), O.A.C., is not in alphabetical order but rather follows the definition of pay phone service. OTIA and Ashtabula noted that Rule 4901:1-5-19(K)(5), O.A.C., is misnumbered and should be designated as Rule 4901:1-5-19(K)(4), O.A.C.

The Commission staff has investigated these minor errors within the rules and determined that they do not affect the substance of the MTSS and, as such, do not pose a barrier to compliance. Given that the definition itself is not being challenged, the Commission will address this issue when the MTSS are next reviewed. Accordingly, such minor errors will be reviewed when the MTSS are reconsidered in two years.

Rule 4901:1-5-02, O.A.C.

- (23) Ameritech recommends that the definition of Acts of God, Rule 4901:1-5-02(A)(2), O.A.C., should be amended to include "any" occurrence not preventable by reasonable care, skill or foresight. In addition to natural causes, Ameritech argues that the definition should also include any malicious or negligent act, caused by any party, whether subscriber or not, that was not preventable by reasonable care, skill or foresight. Further, Ameritech contends that all such actions directly impact the LEC's ability to meet the MTSS.
- (24) The Commission understands Ameritech's general concern that LECs not be faulted for the occurrence of trouble caused by factors outside the LEC's control. However, the Commission does not see the value in changing the word "an" to "any." The Commission believes that broadening the definition to include accidents caused by any party falls outside the definition of Acts of God which only includes occurrences resulting from natural causes. Ameritech's proposal would include accidents not resulting from natural causes but man-made error. The Commission notes that Ameritech has made similar arguments with respect to Rule 4901:1-5-18(A), O.A.C., regarding billing adjustments for delayed out-of-service repairs. Rule 4901:1-5-18(A), O.A.C., already includes additional exceptions beyond Acts of God, including military action, wars, insurrections, riots, strikes and negligent or willful acts committed by the subscriber. However, as discussed in regards to Rule 4901:1-5-18(A), O.A.C., the Commission believes it would be discriminatory to deny billing adjustments to those customers who have suffered excessive out-of-service repair times solely because the service interruption happened to be due to factors other than those already excluded.
- (25) Ashtabula requests that the Commission reconsider its definition for extended area service (EAS) because the MTSS do not

specifically define long distance service, as well as the industry's propensity to market services using terms like "local toll" and "local long distance" and the continued influence of local access and transport areas (LATA) on the provision of EAS. Furthermore, Ashtabula seeks rehearing of this definition to clarify that, when EAS is established, that exchange becomes part of the subscribers' local calling area and all service provided will be local service. Ashtabula believes that these proposals will simplify the meaning of EAS.

- (26) Rule 4901:1-5-02(A)(26), O.A.C., defines EAS as telecommunication service furnished at monthly flat or measured rates, permitting subscribers of a given exchange to either place calls to, or place calls to and receive calls from, one or more other exchanges without being assessed message toll charges for each call.
- (27) The Commission does not believe that it is necessary to revise this definition. The definition clearly states that EAS permits calls from or to a given exchange(s) without being assessed message toll charges. As such, the definition indicates that such calls, if not message toll, are local in nature.
- (28) Ashtabula also requested that the Commission reconsider the definition of LATA to match the definition included in the local service guidelines in Case No. 95-845-TP-COI, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, (95-845, local competition guidelines). Rule 4901:1-5-02(A)(26), O.A.C., defines a LATA as a specific geographic area, generally centered upon a city, metropolitan area or other identifiable regional community of interest, the boundaries beyond which Ameritech may not carry certain telephone calls. Ashtabula argues that the definition adopted is ludicrous. While the definition listed is accurate, the Commission tends to agree with Ashtabula that a more accurate definition is found in the local competition guidelines. The definition included in the local competition guidelines states that Ameritech may not transport calls across LATA boundaries. While true for now, this definition will need to change if and when Ameritech is granted the authority to provide service across LATA boundaries. Therefore, the Commission finds it more appropriate to revisit this definition when the MTSS are reviewed in two years, rather than reconsider the definition now.

- (29) OTIA recommends the Commission clarify the definition of regulated service within Rule 4901:1-5-02(A)(69), O.A.C., given the uncertain status of some services as "detariffed" rather than "deregulated". OTIA does not believe this definition clearly draws a distinction between "detariffed" and "deregulated". The Commission believes that this definition is clear that a regulated service can be provided on either a tariffed or detariffed basis. The Commission notes that the decision as to whether a service is deregulated or detariffed will be made by the Commission on a case-by-case basis.

Rule 4901:1-5-03, O.A.C.

- (30) OTIA points out that Rule 4901:1-5-03(D) and (F), O.A.C., makes reference to the "local serving areas", a term which is not defined. OTIA recommends this term be replaced by the term "serving areas" which has been defined in Rule 4901:1-5-02(A)(71), O.A.C. In addition, OTIA recommends Rule 4901:1-5-03(F), O.A.C., be clarified by changing the first sentence from "affected County Public Serving Answering Point (PSAP)" to read "each county 9-1-1 PSAP." OTIA states this change is needed since some counties have more than one PSAP.
- (31) OTIA is correct that the term "local serving areas" has not been defined, but that the term "serving areas" has been defined. The MTSS definition of "serving area" is "the geographic area in which a provider of local services provides originating service to any other customer upon request." (emphasis added). The Commission finds that the term "local" in Rule 4901:1-5-03(D) and (F), requires no further clarification; "local serving area" and "serving area" have the same meaning under these rules.
- (32) As to Rule 4901:1-5-03(F), O.A.C., the Commission believes that the current rule accommodates notification to the affected PSAP(s). The rule states that the LECs shall report to each county PSAP serving the affected local serving areas. If the affected local serving area is served by more than one PSAP, then it would be the LECs' responsibility, as correctly noted by the OTIA, to notify all PSAPs serving the affected area. OTIA's suggestion of changing the first sentence from "immediately upon discovery" to "immediately upon verification" concerns the Commission. OTIA does not state in its application for rehearing how such verification would be completed and whether it would be done in a timely manner.

Due to the emergency nature of these requirements, we believe that "immediately upon discovery" is the more appropriate language. Thus, OTIA's application for rehearing is denied.

Rule 4901:1-5-04, O.A.C.

- (33) Rule 4901:1-5-04(B)(2), O.A.C., requires that a LEC maintain maps which clearly delineate its serving area as well as include in its tariff maps or a description of the company's local calling areas. OCC argues in its application for rehearing that companies should be required to have on file maps depicting the local calling area, as listing such information in the tariff is of little benefit to customers.
- (34) The Commission disagrees with OCC. Based on our experience, we believe that a textual description of a person's local exchange area would be less confusing to customers and easier to understand. Ashtabula agrees with this rule. Ashtabula believes the rule provides increased flexibility of Rule 4901:1-5-04(B)(2), O.A.C., and will result in more accurate information during the assessment of EAS cases. Furthermore, the Commission's experience with NECs supports the concept of a textual description of local calling areas. The Commission agrees with Ashtabula that a textual description will better serve the needs of the Commission and customers by providing more accurate information during the assessment of EAS cases. Therefore, rehearing on this issue is denied.

Rule 4901:1-5-05, O.A.C.

- (35) Ashtabula, MCI and OTIA requested rehearing on Rule 4901:1-5-05(A), O.A.C., Subscriber Complaint and Complaint-Handling Procedures. MCI states that the rule is unclear as it does not state when a company is required to inform the customer of the availability of the Commission's informal complaint procedure through the Commission's Public Interest Center (PIC). MCI surmises that because of the definition of complaint and the reference in the customer bill of rights to PIC, it is unnecessary for the LEC to inform the subscriber of the availability of PIC when the customer contacts the LEC with a complaint. On the other hand, Ashtabula requests that the Commission require the LEC or IXC to inform the customer, at the initial contact, how the company will proceed with the customer's complaint and inform the customer of the options available to the customer if the complaint is not

resolved to the customer's satisfaction. OTIA recommends that the language in the former MTSS, which requires LECs to inform the customer about the Commission's complaint handling procedures only when the customer is unsatisfied with the results of the company's informal investigation, be reinstated. OTIA argues that requiring such notification in all cases not only creates a cumbersome intake script for the service provider, but will ultimately overburden the Commission's PIC.

- (36) The Commission notes that Rule 4901:1-5-05(A), O.A.C., is very similar to former Rule 4901:1-5-36, O.A.C. The point at which a customer is informed of the availability of PIC's complaint procedures is unimportant so long as such notification takes place not later than the completion of the LEC's or IXC's investigation. However, it is important that every complaining customer be reminded of the availability of PIC no later than when the LEC or IXC informs the subscriber of the results of its investigation. Further, the Commission does not believe that oral notification of PIC's complaint-handling option will require a cumbersome intake script for the service providers, as asserted by OTIA. The newly adopted complaint procedure differs from the previous standard only to the extent that the new rule requires that every consumer filing a verbal or written informal complaint with the LEC be informed of their right to contact PIC for further assistance. The former standard required the LEC or IXC to determine which customers were unsatisfied with the resolution of their complaint with the LEC or IXC, and required that the service provider only inform the unsatisfied subscribers of the existence of PIC. Rule 4901:1-5-05(A), O.A.C., was revised with the goal of educating the subscriber and allowing the subscriber to determine, rather than the LEC or IXC, whether he/she is satisfied with the resolution of the complaint by the company. Accordingly, all applications for rehearing of Rule 4901:1-5-05(A), O.A.C., are denied.
- (37) OTIA contends that Rule 4901:1-5-05(D), O.A.C., imposes an unreasonable and unwarranted burden upon telephone companies who have otherwise resolved the complaints of customers. Rule 4901:1-5-05(D), O.A.C., requires that when a LEC or IXC orally informs the subscriber or the subscriber and the Commission of the results of the company's investigation, the LEC or IXC must also inform the subscriber of the right to have the final results of the company's investigation

in writing. OTIA recommends this rule be modified to require the provision of a written report of investigation only upon customer request.

- (38) As with section (A) of this rule, section (D) is substantially similar to the previous MTSS. Rule 4901:1-5-05(D), O.A.C., differs from the previous standard only to the extent that the consumer must be notified of the option to receive the results of the investigation in writing. The Commission believes that every consumer is entitled to know of his/her rights to receive a written report of the results of the investigation from the LEC or IXC.

Rule 4901:1-5-06, O.A.C.

(A) LEC and IXC Subscription/Slamming

- (39) Rule 4901:1-5-06(A), O.A.C., incorporated into the MTSS the slamming provisions of the local competition guidelines adopted in 95-845 as they currently exist and as the guidelines may be revised from time to time. AT&T objects to incorporating the slamming provisions contained in the local competition guidelines. AT&T argues that since the Federal Communications Commission (FCC) is currently considering these rules in a notice of proposed rulemaking (NPRM), the Commission should wait and see what the FCC does, then review those results and make Commission rules consistent with the FCC. In light of the numerous slamming complaints received by PIC⁵, the Commission finds it imperative that the MTSS address this problem. To merely wait until the FCC has issued its NPRM is insufficient protection for Ohio's consumers in the interim. The Commission will, however, review the FCC's slamming provisions when they are issued to determine whether our MTSS require revision.
- (40) MCI requests rehearing of the three-day period for mailing the information packet to a new subscriber pursuant to Rule 4901:1-5-06(A), O.A.C. MCI argues that the three-day period for mailing the information packet is too short and should be ten days. Further, MCI objects to providing the customer with the name of the customer's current LEC or IXC, as MCI states that only the customer would know this information. MCI

⁵ According to records maintained by our consumer services department, there were over 3,000 slamming contacts to PIC in 1996.

also objects to the requirement for a written LOA to resolve disputes. MCI merely restates in their application for rehearing the arguments raised in their comments and reply comments filed in this proceeding and fails to present any new arguments for the Commission's consideration as to this MTSS. As noted in the Finding and Order, MCI's objections are not well made. Accordingly, the Commission denies MCI's applications for rehearing of Rule 4901:1-5-06(A), O.A.C.

- (41) OCC also disagrees with Rule 4901:1-5-06(A), O.A.C. OCC restates its initial position that companies should pay a \$1,000 penalty to a consumer that has been slammed and further contends that the Commission should have incorporated the marketing provisions of the local service guidelines. The Commission considered OCC's slamming penalty but found it extreme and unnecessary at this time. Furthermore, as we stated in the Finding and Order, the Commission interprets Sections 4905.05 and 4905.381, Revised Code, the local competition guidelines and Section 253 of the Telecommunications Act of 1996 as providing sufficient authority to review LEC marketing practices. Therefore, the Commission reiterates that we find it unnecessary to adopt duplicate standards. Also as we noted in the Finding and Order, MCI's objections are not well made and without merit. Accordingly, the Commission denies the applications for rehearing by OCC and MCI as to Rule 4901:1-5-06(A), O.A.C.

(B) Public Information

- (42) Ashtabula argues that Rule 4901:1-5-06(B)(1)(A), O.A.C., should be amended to require that the tariff summary offered to requesting customers be a Commission-approved tariff summary. The Commission does not believe that such a requirement is necessary at this time. However, should the Commission learn that such tariff summaries are written in an unclear manner or are not provided as required by this rule, the Commission will require that such tariff summaries be reviewed by Commission staff.
- (43) OTIA argues that, since the synopsis of the telephone customer bill of rights will be included in the telephone directory and since some LECs will provide the synopsis in person at their business offices, it is not necessary to require additional delivery by mail as required by Rule 4901:1-5-06(B)(3), O.A.C. The Commission notes that the overwhelming majority of customers order new service(s) by telephone and their next

contact with the LEC is via receipt of the directory or their first bill. In that the first bill also contains a listing of all services ordered by the customer, and the related charges, the first bill is an appropriate vehicle for delivery of the synopsis of the customer bill of rights.

(C) Directories and subscriber listings

- (44) OTIA, Ameritech and Sprint requested rehearing as to Rule 4901:1-5-06(C)(1), O.A.C. OTIA and Sprint argue that this rule would dramatically increase the cost of directories by requiring LECs to list in a single comprehensive printed directory all of the telephone numbers within the LEC's local calling area, which would include EAS listings. Both OTIA and Sprint would prefer to continue with the practice permitted by the previous MTSS rule, which required that EAS listings be made available to customers upon request. According to OTIA and Sprint, LECs implemented that rule by making available to customers other directories relating to the EAS not included in the local directory and request that this rule be clarified to permit the publication of EAS listings in a different volume than the directory of local and related exchanges, consistent with prior practice. Similarly, Ameritech contends that Rule 4901:1-5-06(C)(1), O.A.C., introduces unnecessary, unlawful and potentially anti-competitive requirements by mandating a single comprehensive directory containing all telephone numbers (except those which are nonpublished and unlisted) within the LEC's local calling area. Ameritech argues that (a) the irregular shape and nonalignment of some calling areas calls for the scope of the directory to be most efficiently determined by the directory publisher, and (2) the requirement for a comprehensive directory may force some NECs into the directory business prematurely and thus may inhibit competition.
- (45) The intent of this rule was not to change the current practice of directory issuance, but to ensure that the single, comprehensive directory as issued by each LEC covered the entire local calling area, at the time of issuance, and provided a listing of all the subscribers served in that local calling area, including all the subscribers of each LEC serving that local calling area. Rule 4901:1-5-06(C), O.A.C., requires that each LEC provide a single, comprehensive, alphabetical directory for the local calling area as covered by that directory. Once the

directory is issued to the subscribers, the rule further requires LECs to provide, upon subscriber request, an additional alphabetical directory in the event that there are revisions or changes to the current local calling area covered by the issued directory. Previously, revisions or changes to the local calling area were prompted by the implementation of EAS. In the future, changes to a local calling area may occur when there is a change to a LEC's calling area or a new LEC begins providing service in that local calling area. In the event that any change occurs to a local calling area, the Commission maintains the current policy by requiring that each LEC continue to provide upon request by its subscriber, the additional directory which would amend the original local calling area covered in the previously issued comprehensive directory.

- (46) Ashtabula requests rehearing of Rule 4901:1-5-06(C)(4), O.A.C., which requires LECs to include a notice informing new EAS subscribers that their local calling area will change. Ashtabula requests that the LEC also be directed to inform the subscribers of their right to request an alphabetical directory for the revised local calling area. It has long been the Commission's policy to order LECs to inform their subscribers of the implementation of EAS in EAS proceedings. The bill insert or letter mailed to subscribers includes a description of the EAS service, the new dialing procedures, the date on which the new EAS will be available, as well as the rates for the EAS service. In the future, LECs will be ordered to include within the EAS notice a statement informing subscribers that they may request an alphabetical directory listing for the additional calling areas. Otherwise, in the event of changes to the local calling area, the rule requires that subscribers be notified of the change and the notice to the subscriber regarding the change shall incorporate information on how to receive the revised local calling area directory.
- (47) Rule 4901:1-5-06(C)(5), O.A.C., states that the front cover of the directory shall include the name of the LECs which are served by the directory, provide an indication of the local calling area included and denote the month and year the directory was issued. OTIA and GTE contend this rule requires the advertising of competitors' services, which it argues is an inappropriate object of regulation, a violation of the First Amendment right to free speech and a violation of trademark and copyright protection for the publishers involved. Further, GTE

argues that it does not own the front cover of the telephone directories it distributes. OTIA recommends these arrangements should continue to be negotiated with competing carriers as is the case with many companies. Similarly, Ameritech maintains that this provision of the MTSS violates Ameritech's rights by denying lawful compensation, and dilutes Ameritech's trademarks and trade names, by forcing Ameritech to print another LEC's name on its directory cover. Ameritech contends that its private property rights are protected by the Ohio Constitution, Article I, Section 19, and by comparable provisions of the U. S. Constitution, i.e., the Fifth and Fourteenth Amendments. Ameritech also contends that the First Amendment protects Ameritech's trademark rights and guards against the imposition of forced speech. Ameritech recommends that at the very least, this rule should be amended to require the printing of other LECs' names under a negotiated contract.

- (48) First, as to GTE's assertion that it does not own the front cover of the directories it distributes, the Commission is not persuaded by GTE's attempt to abrogate its responsibilities with respect to directories. Rule 4901:1-5-06(C), O.A.C., requires all LECs to provide and deliver a white pages directory to each of its subscribers. Regardless of what corporate entity provides white pages directory listings to the LEC, the provision of white pages publications and related services shall comply with the MTSS, as well as all other applicable Commission orders, rules, regulations and policies.
- (49) As to OTIA's and Ameritech's claims that the standard is an inappropriate object of regulation, a violation of the First, Fifth and Fourteenth Amendments to the U.S. Constitution and the Ohio Constitution, the Commission finds such claims to be without merit. The first amendment protection of commercial speech is based on the informational purpose of the speech. The purpose of this standard is to clearly inform the public as to the contents of the directory. The purpose of listing the names of all LECs serving the area covered by the directory is to ensure that subscribers are not misled. It is critical that subscribers in this changing environment of multiple, competitive local service providers, understand that the directory includes listings for subscribers of all the LECs providing service in the calling area covered within the directory, not just the subscribers of the LEC for whom the directory is published and delivered. The U.S. Supreme Court determined that "...there can be no constitutional objection to

the suppression of commercial messages that do not accurately inform the public...." *Central Hudson Gas v. Public Service Comm'n* (1980), 447 US 557, at 563. The Commission believes that publishing and distributing a directory that does not clearly inform the public that the subscribers of all LECs serving the area covered by the directory deceives and misleads the public.

Furthermore, the Commission does not find it acceptable to permit the listing of other LECs' names on the cover of directories only by negotiated contract. As with certain other MTSS, the Commission is aware that some NECs may have been unable to negotiate with the ILEC a provision to include the NEC's name on the cover of the directory. The Commission finds that such information is necessary to accurately and clearly inform the public as to the contents of the telephone directory and should not be left to negotiations between the parties. However, the Commission emphasizes that other issues concerning the directory, including but not limited to the business listing of the NEC, delivery of the directory to a facilities-based NEC's customers and advertising, are issues to be addressed in the interconnection or other negotiated agreements. Accordingly, the Commission finds the issues raised by OTIA and Ameritech to Rule 4901:1-5-06(C), O.A.C., to be without merit and their respective applications for rehearing of this rule are, therefore, denied.

- (50) Rule 4901:1-5-06(C)(6), O.A.C., lists the information to be printed on the inside front cover and first pages of the directory, including emergency services; Ohio Highway Patrol; the name, telephone number and location of the LEC's business offices; and LEC payment information. Ameritech contends that Rule 4901:1-5-06(C)(6), O.A.C., should permit the LECs more discretion on whether to begin printing certain information on the inside front cover or first page of the directory. Ameritech supports this contention by arguing that the front cover is usually the first part of the directory to be ripped, torn or removed.
- (51) The newly adopted MTSS requires that less information be printed on the inside front cover or first pages of the directory than its predecessor, Rule 4901:1-5-09(F), O.A.C. The Commission clarifies that the intent of Rule 4901:1-5-06(C)(6), O.A.C., is to require the LECs to print in the directory certain critical information in the order provided by the rule. The rule requires that the telephone numbers for emergency services,

the state highway patrol and local fire and police departments appear before the LEC's telephone number, location, and its authorized payment methods and locations. The Commission emphasizes however, that LECs are permitted to begin printing the information required by Rule 4901:5-06(C)(6), O.A.C., on either the inside front cover or the first pages of the directory. Accordingly, Ameritech's request for rehearing is denied.

- (52) The July 25, 1997 application for rehearing filed by Minnick and Vuletich encourages the Commission to revise Rule 4901:1-5-06(C)(7), O.A.C., to direct each LEC to include in the LEC's directory a clear explanation of which exchanges, including the NXX prefix, are within the subscriber's local calling area, local and long distance calling rate information and local and long distance dialing instructions. Ashtabula also recommends that the subscriber be provided with sufficient information to determine which calls from their exchange are local as opposed to measured-rate (EAS) or toll. The Commission agrees with Minnick's and Ashtabula's concerns, but believes that Rules 4901:1-5-06(C)(7)(E), and 4901:1-5-06(D), O.A.C., adequately addresses these concerns. Rule 4901:1-5-06(C)(7)(E), O.A.C., requires that the directory include a clear designation and explanation of each local calling area covered by the directory, instruction on the placing of local, EAS and long distance calls. Rule 4901:1-5-06(D), O.A.C., requires the LEC to provide subscribers with the necessary information to obtain the most economical LEC services including, rates and charges. Therefore, the Commission believes the issues raised in the applications for rehearing have been addressed. The Commission will ensure, through customer service audits and the monitoring of LEC business office calls, that the LECs provide adequate assistance to subscribers to distinguish between local calls, measured-rate and message toll calls as well as the applicable rates. Furthermore, the Commission will continue to work with interested parties such as Concerned Ohioans for State of the Art Communications, OCC and the LECs to ensure that the calling and rate information provided as a result of the implementation of EAS is adequate to meet the needs of the affected subscribers.

(D) Rates and special charges information

- (53) Edgemont urges the Commission to adopt a rule requiring notice of non-presubscribed additional services (*69 auto call-back is an example) and a no-cost technique to eliminate these

features from a line. Edgemont further urges a one-time bill forgiveness for charges for such services for families with children. The Commission notes that notice is already required for such services, and free blocking of such services is typically available to subscribers upon request. The Commission is committed to working with customers individually to obtain one-time forgiveness for such charges and will continue efforts to educate consumers regarding non-presubscribed services.

Rule 4901:1-5-07, O.A.C.

- (54) OTIA contends Rule 4901:1-5-07(D), O.A.C., limits the choices available to customers for payment of bills and contradicts existing contracts between LECs and their authorized agents. OTIA recommends that at a minimum the rule should be imposed only upon new authorized agent relationships and should grandfather existing relationships so as not to disrupt existing contracts. The Commission agrees that Rule 4901:1-5-07(D), O.A.C., does not retroactively apply to LEC/agent contracts in effect prior to the adoption of this rule and accordingly will suspend the implementation of this rule for one year. In the meantime, the LECs are encouraged to work with the Commission's staff in an attempt to align agreements in accordance with the rule. If an agreement has not been reached within the year, then the LEC should seek a waiver of the rule.
- (55) Edgemont objects to Rule 4901:1-5-07(D), O.A.C., as it does not require the LEC to have at least one authorized agent in each exchange. The Commission recognizes, as does OTIA "that customers are entitled to rely upon payment to authorized agents...." The Commission believes that LECs should provide a way for customers to pay their bills in person in that many consumers do not have checking accounts and many LECs have closed, or are scheduled to close, their local business offices. It would be inappropriate, however, to require NECs to provide for at least one agent in each exchange since NEC serving areas may not be aligned with exchange boundaries.
- (56) Rule 4901:1-5-07(E), O.A.C., provides that, when a subscriber pays his/her bill at the LEC business office or to an authorized agent, the payment is to be credited to the subscriber's account by the end of the same business day in which the payment

was made to the LEC or the LEC's authorized agent. Furthermore, Rule 4901:1-5-07(E), O.A.C., provides that the LEC shall treat payments made to its authorized agent in the same manner as if payment is received directly by the LEC. OTIA argues it is impossible to comply with this rule since authorized agents are not online with the billing or accounting systems of the LECs. OTIA recommends that "the payment be credited to the subscriber's account immediately where feasible and in any event shall be credited as of the time of payment." Sprint also objects to this provision stating that Sprint cannot credit the accounts of customers who make payment at an agent on the same day. Sprint suggests that payment be credited on the day Sprint receives the payment.

- (57) The Commission believes OTIA may have misinterpreted Rule 4901:1-5-07(E), O.A.C., when it argued that the lack of online access by authorized agents to LEC accounting and billing systems would make it impossible to comply with this rule. The Commission realizes that the lack of such access makes it impossible to credit the customer's account by the end of that day. The intent of this provision is that the payment be credited to the subscriber's account immediately where feasible and, in any event, be credited as of the day payment is received by the authorized agent. Rule 4901:1-5-07(E), O.A.C., simply requires that the LEC treat customers paying at an authorized agent as if their account were credited on the day of payment. In practical terms, this means that customers paying their phone bills at an authorized agent in time to avoid disconnection or a late payment charge will not suffer these consequences simply because of the lag time in forwarding the payment from the authorized agent to the LEC. It is for this reason as well that we reject Sprint's suggestion that payments made at an authorized agent be credited on the day the LEC receives payment.
- (58) Ashtabula renews its request to have the Commission address the accuracy of information provided by LEC customer service representatives. While the Commission understands Ashtabula's concern that accurate information be provided to subscribers by the LEC's customer service representatives, the Commission interprets the language of Sections 4905.05 and 4905.381, Revised Code, to grant more than sufficient authority to monitor and/or direct, among other things, the in-take scripts and information LECs provide to subscribers. Under Sections 4905.231 and 4905.381, Revised Code, as well as under our general supervisory powers in Sections 4905.04 - 4905.06,

Revised Code, the Commission is authorized to regulate and monitor the practices of utilities under our jurisdiction and, therefore, believes that a MTSS requiring such is not necessary. The Commission also notes that the accuracy of information provided to subscribers is monitored through customer service audits and by the monitoring of LEC business office calls. However, the Commission will thoroughly investigate complaints that service providers are misleading subscribers. Furthermore, the Commission believes that the better method to address misinformation by the LEC is better education of the subscribers. To that end, the customer bill of rights has been developed and will be provided to customers by various means. The Commission further expresses its willingness to consider other appropriate, efficient and cost-effective measures to educate the citizens of Ohio about their rights as telephone subscribers.

Rule 4901:1-5-08, O.A.C.

- (59) Rule 4901:1-5-08, O.A.C., established a registration procedure for all payphone providers in Ohio and quarterly updates of the providers payphone locations. OTIA contends Rule 4901:1-5-08(A), O.A.C., is unnecessary and burdensome to LECs which have maintained payphones in Ohio for about 75 years. OTIA concludes that LECs should be exempted from this standard.
- (60) OTIA's application for rehearing on this point is denied. As a result of Section 276 of the Telecommunications Act of 1996 and the FCC's decisions in CC Docket No. 96-128 which mandated a pro-competitive environment for the provision of pay telephone service, this Commission has established compliance procedures to ensure that the public benefits from this new regulatory environment. In response to the FCC's recent pay telephone service mandates, the Commission requested public comment in this proceeding on the most appropriate manner to address private payphone compliance. The purpose of Rule 4901:1-5-08, O.A.C., is to ensure that our standards are levied on a nondiscriminatory basis and to ensure that the public interest is protected.

Historically, the sole provider of payphones in a given exchange was the local exchange carrier serving that area. Subsequently, the FCC determined that there is a federally protected right to connect private payphone equipment to the public switched network. One result of the FCC's decision

was the creation of a competitive payphone industry which began marketing its services to consumers as an alternative to the payphone service provided by the incumbent local exchange carriers.

The Commission determined at that time and has subsequently reaffirmed that, in order for the Commission to verify that private payphones adhere to the Commission-ordered requirements, private payphone owners should submit to our Compliance Division, on a quarterly basis, a list of the payphone locations owned by that provider. Now that the FCC has exercised the authority given it by Congress through adoption of the Telecommunications Act of 1996 in order to reclassify the incumbent LECs' payphone operations from the regulated side of the business to deregulated status, the Commission believes it is appropriate to require all payphone providers to adhere to the same set of regulations.

In particular we observe that the Commission has determined in its previous payphone investigations (Case No. 84-863-TP-COI, *In the Matter of the Commission Investigation into the Regulation of Customer-Owned, Coin-Operated Telephone Service* (84-863) and Case No. 88-452-TP-COI, *In the Matter of the Commission Investigation Relative to the Compliance of Customer-Owned, Coin-Operated Telephones with Commission-Ordered Guidelines Service* (COCOT compliance guidelines, 88-452) that, in order for the Commission to verify that private payphones adhere to the Commission-ordered requirements, private payphone owners should submit to our Compliance Division, on a quarterly basis, a list of the payphone locations owned by that provider. Now that the FCC in CC Docket No. 96-128 has reclassified to deregulated customer premise equipment (CPE) all incumbent LEC-owned payphone equipment, the Commission maintains that it is now appropriate to require all payphone providers to adhere to the same set of regulations (including incumbent LECs).

Moreover, the Commission further notes that it is important that all payphone providers (including incumbent LECs) must be required to submit a customer location list since the Commission can no longer rely on the incumbent LECs as the sole source through which payphone providers connect their instruments to the public switched network. For the foregoing reasons, OTIA's application for rehearing on this point is denied.

The Commission notes that it is our policy to evaluate and forego on a prospective basis regulatory reporting requirements where possible. To that end, the Commission, on its own accord, will suspend the quarterly reporting requirement set forth in Rule 4901:1-05-08(A), O.A.C., pending further review in Case No. 96-1310-TP-COI, *In the Matter of Commission's Investigation Into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services*. However, in so doing, we note that such information must be provided to the Commission staff upon request pending further review in Case No. 96-1310-TP-COI.

- (61) OTIA argues that compliance with Rule 4901:1-5-08(B)(4), O.A.C., would require carriers configured for post-pay telephones to make uneconomical network changes or remove post-pay telephones, some of which are located in areas where payphones are scarce. As a result, according to OTIA, customers in these areas may not have access to payphone service. OTIA recommends that existing post-pay providers be grandfathered unless and until their networks are reconfigured accordingly.
- (62) In 1985, the Commission's order in 84-863, directed those companies providing payphone services to upgrade their systems and, as they upgraded their systems, to remove the then-present post-pay pay stations and replace them with pre-pay type instruments.

The Commission determined in its October 22, 1992 Entry on Rehearing in 88-452, that post-pay, customer-owned, coin-operated telephones (COCOTs) "create customer confusion and are not in the public interest." As an example, the Commission cited the situation of visually impaired users unaccustomed to post-pay LEC phones, illiterate persons and non-English-reading users who could not understand the directions on post-pay COCOTs. In the Commission's August 27, 1992 Entry in 88-452, we noted that the payphone association which represented the interests of private payphone owners argued that "post-pay technology is not state of the art and proliferation of these types of payphones would be a major setback for the payphone industry in Ohio." The private payphone association also claimed that "post-pay telephones lack sophisticated answer supervision which is essential for the public to obtain adequate service." Accordingly,

OTIA's request to rehear Rule 4901:1-5-08(A), O.A.C., is denied.

- (63) OTIA and Sprint request rehearing as to Rule 4901:1-5-08(F), O.A.C. OTIA believes there is a language error in this provision as the rule states that "[a] completed call is a call that is answered by the called party". Sprint submits that this definition of a completed call is overly broad. According to Sprint, a completed call should be one that is terminated at the called number to recognize that anyone at the location called or an answering machine can answer the call. OTIA proposes the definition of a completed call should be a call that is answered by the called number."
- (64) The Commission believes that the definition of a completed call is sufficient. However, the Commission clarifies that a completed call is one that is answered at the called number by any individual or electronic means.

Rule 4901:1-5-14, O.A.C.

- (65) Although AT&T and MCI support the Commission's implementation of toll caps for residential customers and, as interpreted by MCI, for nonresidential customers, AT&T and MCI object to the rigidity of Rule 4901:1-4-14, O.A.C. MCI asserts that companies should be allowed to use greater flexibility in determining creditworthiness. Likewise, AT&T states that the Commission should not impose such stringent requirements for the establishment of credit. AT&T further notes that Section 4933.17, Revised Code, does not mention telephone companies. Therefore, AT&T reasons that the legislature recognized the difference between telephone companies and other utilities. AT&T concludes that carriers should be allowed to ask for a cash deposit or a guarantor acceptable to the carrier.
- (66) As AT&T correctly notes, Section 4933.17, Revised Code, does not mention telephone companies. Historically, this Commission has recognized this difference. For example, 4901:1-17, O.A.C., allows telephone companies to assess a deposit at 230 percent of the current monthly bill while other utilities are limited to 130 percent. This distinction is also retained in the new MTSS. As to the arguments by AT&T

and Telecommunications Resellers Association that customers should only be allowed to establish credit by either a deposit or a guarantor, the Commission finds that such a restriction might prohibit otherwise creditworthy customers from being able to obtain service.

- (67) MCI and AT&T argue that the Commission should allow companies more flexibility in determining creditworthiness. The Commission agrees and, therefore, finds it necessary to clarify and emphasize that Rule 4901:1-5-14, O.A.C., does not prohibit service providers from utilizing or developing other innovative measures to determine an applicant's creditworthiness provided such other means receive Commission approval pursuant to applications filed with the Commission and served on the necessary parties. The other mechanisms referenced by MCI in its initial comments, a company's internal customer payment history and use of independent credit agencies, are acceptable so long as each company's creditworthiness standards include the minimum provisions outlined in this rule. Thus, the carriers have flexibility to determine an applicant's creditworthiness. However, as OCC points out in its memorandum contra the applications for rehearing, MCI does not set forth any reasons why deposit rules are not needed in a competitive market as opposed to a monopoly market. The Commission is allowing carriers to utilize toll caps, subject to Commission approval, on a company-by-company basis and if the company has enacted provisions for toll fraud. Such applications should not be filed as automatic applications but, instead, should be docketed as "ATA" cases and served on OCC and Edgemont. These additional measures provide for more flexibility in determining creditworthiness. The Commission envisions that an applicant who is unable to establish service by paying a deposit may be given the option of establishing service by agreeing to a toll cap and paying no deposit or a reduced deposit.
- (68) In the Finding and Order issued in this case on June 26, 1997, the Commission elected to implement toll caps rather than lower the deposit amount as requested by Edgemont/APAC in the comments filed in this proceeding. In its application for rehearing, Edgemont argues that if the Commission is going to permit the use of toll caps, it must establish a proceeding which will allow the public to participate in the process of developing just and workable toll caps. Furthermore, Edgemont requests clarification of Rule 4901:1-5-14(A)(8), O.A.C., to specifically state whether or not toll caps are in addition to